

INTER-OFFICE COMMUNICATIONS

Palm Beach County, Florida

TO: John Sansbury, County Administrator
Lisa Heasley, County Attorney's Office
Herb Kahlert, County Engineer
David Blutworth, State Attorney
Joy Shearer, Asst. Attorney General
Captain Cook, Sheriff's Dept. - Civil
Frank Schulz, Sheriff's Office
Bob Basehart, Planning, Zoning & Bldg.
Bob Palchanis, Building Division, Director
Tom McEaddy, Assistant County Attorney
Patty Young - 4th District Court of Appeals
Law Library - Judy Hemberger - Finance
(2) County Library - Chris Wilson - "
FPL Company - Richard Iavarone - "
- Sharon O'Polyn - "

DATE: December 13, 1985

FROM: John W. Dame, Chief Deputy Clerk

RE: PALM BEACH COUNTY ORDINANCE DISTRIBUTION

ORDINANCE NO. 85-39

TITLE REFERENCE:

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS
OF PALM BEACH COUNTY, FLORIDA, GRANTING TO FLORIDA
POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS,
AN ELECTRIC FRANCHISE IN THE UNINCORPORATED AREAS
OF PALM BEACH COUNTY, FLORIDA, AND IMPOSING
PROVISIONS AND CONDITIONS RELATING THERETO

Attached is a copy of the above referenced Ordinance of Palm Beach
County. \ This Ordinance has been filed with Florida Department of State
and forwarded to Municipal Code Corporation for codification. The
effective date is "upon acceptance by FPL".

Signed

Low Clinger
Deputy Clerk

JWD:

Attachment

* cc: Commissioners, BCC
Clerk
Minutes

*If a complete copy of ordinance is needed, please advise this office
and we will be happy to provide a copy.

ORDINANCE NO. 85-39

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS
OF PALM BEACH COUNTY, FLORIDA, GRANTING TO FLORIDA
POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS,
AN ELECTRIC FRANCHISE IN THE UNINCORPORATED AREAS
OF PALM BEACH COUNTY, FLORIDA, AND IMPOSING
PROVISIONS AND CONDITIONS RELATING THERETO

WHEREAS, Florida Power & Light Company desires to continue
providing electric service by utilizing public rights of way and other
public property within the unincorporated areas of Palm Beach County; and

WHEREAS, Palm Beach County finds that it is in the public
interest to retain control over the use of public rights of way and other
public property by providers of electric service; and

WHEREAS, Palm Beach County finds that the granting of a
non-exclusive franchise to Florida Power & Light Company is desirable to
promote the above described interests of Palm Beach County; and

WHEREAS, Palm Beach County and Florida Power & Light Company
desire to reach an understanding as to the specific terms and conditions
of such a franchise agreement; and

WHEREAS, Palm Beach County finds that all amounts paid to it by
Florida Power & Light Company pursuant to such a franchise are needed to
fund such county purposes in the unincorporated areas of the county as
are determined by the Palm Beach County Board of County Commissioners,
and are to be used only for such purposes;

NOW, THEREFORE,

BE IT ORDAINED by the Board of County Commissioners of Palm
Beach County, Florida:

Section 1. That there is hereby granted to Florida Power &
Light Company (herein called the "Grantee"), its successors and assigns,
the non-exclusive right, privilege or franchise to construct, maintain
and operate in, under, upon, over and across the present and future
streets, alleys, bridges, easements and other public places throughout
all the unincorporated areas of Palm Beach County, Florida (herein called
the "Grantor"), and its successors, in accordance with established
practice with respect to electrical construction and maintenance, for the
period of thirty (30) years from the date of acceptance hereof, electric

1 light and power facilities (including conduits, poles, wires and
2 transmission lines, and, for its own use, telephone and telegraph lines)
3 for the purpose of supplying electricity to Grantor and its successors,
4 the inhabitants thereof, and persons and corporations beyond the limits
5 thereof.

6 Section 2. That the facilities shall be so located or
7 relocated and so erected as to interfere as little as possible with
8 traffic over said streets, alleys, bridges and public places, and with
9 reasonable egress from and ingress to abutting property. The location or
10 relocation of all facilities shall be made under the supervision and with
11 the approval of such representatives as the governing body of Grantor may
12 designate for the purpose, but not so as to unreasonably interfere with
13 the proper operation of Grantee's facilities and service. That when any
14 portion of a street is excavated by Grantee in the location or relocation
15 of any of its facilities, the portion of the street so excavated shall,
16 within a reasonable time and as early as practicable after such
17 excavation, be replaced by the Grantee at its expense, and in as good
18 condition as it was at the the time of such excavation. Provided,
19 however, that nothing herein contained shall be construed to make the
20 Grantor liable to the Grantee for any cost or expense in connection with
21 the construction, reconstruction, repair or relocation of Grantee's
22 conduits, poles, towers and appurtenances thereto in streets, highways
23 and other public places made necessary by the widening, grading, paving,
24 or otherwise improving by said Grantor, of any of the present and future
25 streets, avenues, alleys, highways, bridges, easements and other public
26 places used or occupied by the Grantee hereunder, which shall be at the
27 cost of the Grantee, except, however, Grantee shall be entitled to
28 reimbursement of its cost as may be provided by law.

29 Section 3. The Grantor shall in no way be liable or
30 responsible for any accident or damage that may occur in the
31 construction, operation or maintenance by Grantee of its facilities
32 hereunder, and the acceptance of this ordinance shall be deemed an
33 agreement on the part of Grantee to indemnify Grantor and hold it
34 harmless against any and all liability, loss, cost, damage or expense
35 which may accrue to Grantor by reason of the neglect, default or

1 misconduct of Grantee in the construction, operation or maintenance of
2 its facilities hereunder.

3 Section 4. That all rates and rules and regulations
4 established by Grantee from time to time shall be at all times reasonable
5 and Grantee's rates for electricity shall at all times be subject to such
6 regulation as may be provided by law.

7 Section 5. As a further consideration of this franchise, that
8 no later than sixty (60) days after the first anniversary date of this
9 grant and no later than sixty (60) days after each succeeding anniversary
10 date of this grant, the Grantee, its successors and assigns, shall have
11 paid to the Grantor and its successors an amount which added to the
12 amount of all taxes as assessed, levied or imposed (without regard to any
13 discount for early payment or any interest or penalty for late payment),
14 special assessments, licenses, excises, fees, charges and other
15 impositions of any kind whatsoever (except the County school tax and the
16 taxes for County school districts levied under Article VII, Section 9, of
17 the Constitution of the State of Florida as constituted on the date of
18 this grant and except amounts for assessments for special benefits, such
19 as sidewalks, street paving and similar improvements) levied or imposed
20 upon the Grantee's electric property, business or operations, and those
21 of Grantee's electric subsidiaries within Palm Beach County, Florida, by
22 the Grantor for itself or for the benefit of any other general or special
23 public or other governmental body located in whole or in part within the
24 limits of Palm Beach County, Florida, or so levied or imposed by or
25 under any authority other than municipalities for the benefit of any
26 general or special public or other governmental body, located in
27 whole or in part within the limits of Palm Beach County, Florida,
28 including the Grantor, for the preceding tax year, will equal four per
29 cent (4%) of Grantee's revenues from the sale of electrical energy to
30 residential, commercial and industrial customers within the
31 unincorporated areas of Palm Beach County, Florida, for the twelve (12)
32 fiscal months preceding the applicable anniversary date. In calculating
33 the amount which Grantee shall have paid Grantor no later than sixty (60)
34 days after the first anniversary date of this Grant, revenues from the
35 sale of electrical energy to residential, commercial and industrial

1 customers during the first fiscal month after the effective date of this
2 Grant shall be excluded. Nothing herein shall be construed to be a
3 limitation on the assessment and collection of valid taxes, special
4 assessments, licenses, fees, charges and other impositions by the Grantor
5 or other public or governmental body on or from the Grantee in excess of
6 such four per cent (4%) amount or such amount as adjusted by Grantor in
7 the event of the exercise of the option by Grantor as provided
8 hereafter in this Section.

9 It is further provided that the Grantor shall have the
10 option to adjust the amount to be paid by the Grantee in consideration
11 of this franchise for the sixth and subsequent years of this grant, the
12 option to adjust such amount to be exercised by the adoption of an
13 ordinance, a certified copy of which must be delivered to the Grantee
14 no later than 90 days before the fifth anniversary date of this
15 grant. Such ordinance shall provide that no later than sixty (60)
16 days after the sixth anniversary date of this grant and no later
17 than sixty (60) days after each succeeding anniversary date of this
18 grant, the Grantee, its successors and assigns, shall have paid to
19 the Grantor and its successors an amount which added to the amount
20 of all taxes as assessed, levied or imposed (without regard to any
21 discount for early payment or any interest or penalty for late
22 payment), special assessments, licenses, excises, fees, charges and
23 other impositions of any kind whatsoever (except the County school
24 tax and the taxes for County school districts levied under Article
25 VII, Section 9, of the Constitution of the State of Florida as
26 constituted on the date of this grant and except amounts for
27 assessments for special benefits, such as sidewalks, street paving
28 and similar improvements) levied or imposed upon the Grantee's
29 electric property, business or operations, and those of Grantee's
30 electric subsidiaries within Palm Beach County, Florida, by the
31 Grantor for itself or for the benefit of any other general or special
32 public or other governmental body located in whole or in part within
33 the limits of Palm Beach County, Florida, or so levied or imposed
34 by or under any authority other than municipalities for the benefit
35 of any general or special public or other governmental body, located

1 in whole or in part within the limits of Palm Beach County, Florida,
2 including the Grantor, for the preceding tax year, will equal an
3 amount (to be specified by the Grantor in the ordinance exercising
4 its option) not exceeding six percent (6%) of Grantee's revenues
5 from the sale of electrical energy to residential, commercial and
6 industrial customers within the unincorporated areas of Palm Beach
7 County, Florida, for the twelve (12) fiscal months preceding the
8 applicable anniversary date. Grantor's option hereunder to adjust
9 the amount to be paid by the Grantor may be exercised one time
10 only, and if not exercised timely and as otherwise specified above
11 said option shall be deemed to have been waived. However, failure
12 to exercise said option by Grantor will not affect the amount to be
13 paid by Grantee to Grantor under the terms of the first paragraph of
14 this Section which, in the event said option is not exercised by
15 Grantor, shall be determinative of the amount to be paid by Grantee
16 to Grantor for the remaining term of this grant. Grantor's option
17 hereunder shall be limited solely to the amount to be paid by the
18 Grantee in consideration of this franchise as specifically set
19 forth above, and no other section or provision of this franchise
20 agreement may be altered, amended or affected by the Grantor without the
21 concurrence of the Grantee.

22 Section 6. Payments of the amount to be paid to Grantor by
23 Grantee under the terms of Section 5 hereof shall be made in estimated
24 monthly installments commencing ninety (90) days after the effective
25 date of this grant. Each estimated monthly installment shall be
26 calculated on the basis of ninety per cent (90%) of Grantee's revenues
27 (as defined in Section 5 or in an ordinance exercising Grantor's option
28 thereunder) for the monthly billing period ending sixty (60) days prior
29 to each scheduled monthly payment. It is also understood that for
30 purposes of calculating each monthly installment, all taxes, special
31 assessments, licenses, excises, fees, charges and other impositions shall
32 be estimated on the basis of the latest data available for all such
33 amounts imposed on the Grantee, before being prorated monthly. The final
34 monthly installment for each fiscal year of this grant shall be adjusted

1 to reflect any underpayment or overpayment resulting from the estimated
2 monthly installments made for said fiscal year.

3 Grantor may, at its option, and upon reasonable notice to
4 Grantee, at any time within ninety (90) days after the close of each
5 fiscal year of this grant, and at the sole expense of Grantor, examine
6 the books of Grantee as such books relate to the calculation of the
7 franchise fee generated within the unincorporated area of Palm Beach
8 County. Such examination of such books and records of Grantee by Grantor
9 shall be during the regular hours of business of the Grantee and at the
10 General Office of the Grantee.

11 Section 7. As a further consideration of this franchise, the
12 Grantor agrees not to engage in the business of distributing and selling
13 electricity during the life of this franchise or any extension thereof in
14 competition with the Grantee, its successors and assigns.

15 Section 8. That failure on the part of Grantee to comply in
16 any substantial respect with any of the provisions of this ordinance
17 shall be grounds for a forfeiture of this grant, but no such forfeiture
18 shall take effect if the reasonableness or propriety thereof is protested
19 by Grantee until a court of competent jurisdiction (with right of appeal
20 in either party) shall have found that Grantee has failed to comply in a
21 substantial respect with any of the provisions of this franchise, and the
22 Grantee shall have six (6) months after the final determination of the
23 question to make good the default before a forfeiture shall result with
24 the right in Grantor, at its discretion, to grant such additional time to
25 Grantee for compliance as necessities in the case require. Provided,
26 however, that the provisions of this Section shall not be construed as
27 impairing any alternative right or rights which the Grantor may have with
28 respect to the forfeiture of franchises under the Constitution or the
29 general laws of Florida.

30 Section 9. Should any section or provisions of this ordinance
31 or any portion hereof be declared by a court of competent jurisdiction to
32 be invalid, such decision shall not affect the validity of the remainder
33 hereof as a whole or any part hereof, other than the part declared to be
34 invalid.

3 Section 11. As a condition precedent to the taking effect of
4 this grant, Grantee shall have filed its acceptance hereof with the
5 Grantor's Clerk within thirty (30) days after adoption of this ordinance
6 and receipt of acknowledgment from the Department of State that said
7 ordinance has been filed, and this ordinance shall take effect on the
8 date upon which Grantee files its acceptance.

9 Section 12. The provisions of this ordinance shall become and
10 be made a part of the code of laws and ordinances of Palm Beach County,
11 Florida. The Sections of the ordinance may be renumbered or relettered
12 to accomplish such, and the word "ordinance" may be changed to "section,"
13 "article," or any other appropriate word.

14 APPROVED AND ADOPTED by the Board of County Commissioners of
15 Palm Beach County, Florida, on the 10th day of December, 19 85.

16 PALM BEACH COUNTY, FLORIDA, BY ITS
17 BOARD OF COUNTY COMMISSIONERS

18 By Dr. Adams
19 Chairman

20 APPROVED AS TO FORM AND
21 LEGAL SUFFICIENCY

22 _____
23 County Attorney

24 Acknowledgement by the Department of State of the State of
25 Florida, on this, the 11th day of December, 19 85 .

26 Acknowledgement from the Department of State received on the
27 12th day of December, 1985, at 11:52 A.M., and filed
28 in the Office of the Clerk of the Board of County Commissioners of Palm
29 Beach County, Florida.

STATE OF FLORIDA, COUNTY OF PALM BEACH

I, JOHN B. DUNN, ex-officio Clerk of the Board of County Commissioners certify this to be a true and correct copy of the original filed in my office on 12/10/85

DATED at West Palm Beach, FL on 12/12/88

JOHN B. DUNN, Clerk.

By Lari Clinger D.C.

Deputy Clerk